

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Heather L. Welk, Susie B. Jones, William Bigelow, Christine Heinzman and Mark Heinzman, Sigmond Singramdoo, Troy Forte and Lynn M. Forte, David J. Roster and Charity Roster, Patrick Rucci, Gary G. Klingner, Rebecca A. Albers, Ian Patterson, and James Willis Konobeck, Jr. and Alison Konobeck,

Case No. 11-cv-_____

Plaintiffs,

NOTICE OF REMOVAL

v.

GMAC Mortgage, LLC, Ally Financial, Inc., Mortgage Electronic Registration Systems, Inc., MERSCORP, Inc., U.S. Bank, N.A., Deutsche Bank Trust Company Americas, and Shapiro & Zielke, LLP,

Defendants.

TO: Plaintiffs and their counsel, William B. Butler, Butler Liberty Law, LLC, 4100 Multifoods Tower, 33 South Sixth Street, Minneapolis, MN 55402.

Under 28 U.S.C. § 1446, defendants GMAC Mortgage, LLC, Ally Financial, Inc., Mortgage Electronic Registration Systems, Inc., MERSCORP, Inc., U.S. Bank, N.A., and Deutsche Bank Trust Company Americas (the “Bank Defendants”), hereby give notice of the removal of the above-entitled action to the United States District Court for the District of Minnesota, and in support of the Notice of Removal state as follows:

1. On or about August 17, 2011, plaintiffs commenced an action against the Bank Defendants, together with one other defendant in Dakota County District Court,

entitled *Heather L. Welk, Susie B. Jones, William Bigelow, Christine Heinzman and Mark Heinzman, Sigmond Singramdoo, Troy Forte and Lynn M. Forte, David J. Roster and Charity Roster, Patrick Rucci, Gary G. Klingner, Rebecca A. Albers, Ian Patterson, and James Willis Konobeck, Jr. and Alison Konobeck v. GMAC Mortgage, LLC, Ally Financial, Inc., Mortgage Electronic Registration Systems, Inc., MERSCORP, Inc., U.S. Bank, N.A., Deutsche Bank Trust Company Americas, and Shapiro & Zielke, LLP* (the “State Action”). A copy of the Summons and Complaint in the State Action are attached as Exhibit A to this Notice of Removal.

2. Copies of all process, pleadings, and orders served on the Bank Defendants in the State Action are attached to this Notice of Removal as Exhibit A.

3. The United States District Court for the District of Minnesota has original jurisdiction over this action under 28 U.S.C. § 1332(a).

a. The matter in controversy is between citizens of different states. Plaintiffs allege that:

- i. They are citizens of Minnesota. (Complaint ¶¶ 1-12.)
- ii. Though the Complaint does not allege any facts related to the citizenship of GMAC Mortgage, LLC, GMAC Mortgage, LLC is a Delaware limited liability company headquartered at 1100 Virginia Avenue, Fort Washington, PA.
- iii. Ally Financial, Inc. is a bank holding company headquartered in Detroit, Michigan. (*Id.* ¶ 14.)
- iv. Mortgage Electronic Registration Systems, Inc. is a Delaware corporation with its principal place of business in Virginia. (*Id.* ¶ 15.)
- v. MERSCORP, Inc. is a Delaware corporation. (*Id.* ¶ 16.)
- vi. U.S. Bank, N.A. is a national bank headquartered in Cincinnati, Ohio. (*Id.* ¶ 17.)

vii. Deutsch Bank Trust Company Americas' corporate headquarters are located in New York, New York. (*Id.* ¶ 18.)

viii. Shapiro & Zielke, LLP is a law firm located in Burnsville, MN. (*Id.* ¶ 19.) Shapiro & Zielke's citizenship is irrelevant, as it was fraudulently joined. "Fraudulent joinder exists if, on the face of plaintiff's state court pleadings, no cause of action lies against the resident defendant." *Anderson v. Home Ins. Co.*, 724 F.2d 82, 84 (8th Cir. 1983). Shapiro & Zielke was named in the lawsuit because it was retained to commence foreclosures by advertisement actions upon the plaintiffs' mortgages. But in acting as foreclosure counsel, Shapiro & Zielke was "an attorney acting within the scope of [its] employment as attorney [and] is immune from liability to third persons for actions arising out of that professional relationship." *McDonald v. Stewart*, 182 N.W.2d 437, 440 (Minn. 1990). Because Shapiro & Zielke is immune from any cause of action arising out of the commencement of the foreclosure by advertisement actions, the Complaint fails to state a claim against Shapiro & Zielke, and its citizenship should be disregarded for the purposes of diversity.

b. The amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. Plaintiffs seek to extinguish all obligations under their mortgages, to have returned to them all sums paid on the mortgages, and to obtain clear title free from any mortgages on four separate properties. (Complaint, Prayer for Relief.) The assessed value for the four properties, together with the amounts previously paid on the mortgages, exceeds \$75,000. *See Garland v. Mortgage Electronic Registration Sys., Inc.*, Civil Nos. 09-71, 09-72, 09-342, 09-430, 2009 WL 1684424, *2-3 (D. Minn. June 16, 2009) (holding that for the purposes of establishing diversity jurisdiction, the amount in controversy in a claim to invalidate a foreclosure is the value of the property subject to the mortgage that was foreclosed upon).

4. This notice of removal is filed within 30 days after service of the Summons and Complaint upon the Bank Defendants.

5. The United States District Court for the District of Minnesota is the District Court for the district embracing the entire state of Minnesota, where the State Action is currently pending. *See* 28 U.S.C. § 103. Venue therefore is proper in this district under 28 U.S.C. § 1441(a).

6. The Bank Defendants expressly reserves its right to raise all defenses and objections to plaintiffs' claims after the action is removed to the above Court.

Dated: September 16, 2011

FAEGRE & BENSON LLP

s/ Trista M. Roy

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